

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 406 of 1995

with

CRIMINAL MISC.APPLICATION No 460 of 1996

For Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

QBDULBHAI JAFARBHAI GHANCHI

Versus

STATE OF GUJARAT

Appearance:

MS RV ACHARYA for the appellant.

MR PR ABICHANDANI, APP, for the respondent

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and

MR.JUSTICE A.L.DAVE

Date of decision: /07/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The present appeal arises out of a judgment and order rendered by the learned Additional Sessions Judge, Bhavnagar, Camping at Mahuva, in Sessions Case No.176 of 1991, on March 15, 1995. The appellant came to be convicted by virtue of the abovesaid judgment and order

for offences punishable under Sections 302 and 307 of Indian Penal Code and was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- for offence punishable under Section 302 of I.P.C. He is ordered to undergo further rigorous imprisonment for a period of six months in event of default in payment of fine. For the offence punishable under Section 307 of I.P.C., he is ordered to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months.

2. The incident occurred at about 6.00 A.M. on June 10, 1991, in the house of the accused, situate at Khatkaiwad, Mahuva of Bhavnagar District. The accused was staying there with his wife-Sharifaben and three minor daughters, Reshma, Ashma and Hashma. On the day of the incident, wife of the accused was brushing her teeth, the three minor daughters were asleep in the house and the accused was pacing in the courtyard. He suddenly picked up an axe and inflicted a blow on the head of his wife-Sharifa. She, therefore, fell down. He, then, inflicted one more blow on her ear and then went to the place where the three minor children were sleeping and inflicted injuries on them with the axe. Sharifaben, therefore, raised shouts, in response to which, Rahim and Nooriben arrived at the spot and intervened. All the four injured were taken to the hospital at Mahuva and, ultimately, the three minor children succumbed to the injuries. However, Sharifaben, wife of the accused survived.

2.1 After being taken to the hospital, a complaint was lodged by Sharifaben narrating the incident. On basis of the complaint, an offence came to be registered and investigation made. At the end of the investigation, it was found that the appellant accused-Abdulbhai Jafarbai Ghanchi had committed murder of three minor daughters and had attempted to commit murder of his wife-Sharifaben and, therefore, he came to be charge sheeted for the offence. As the case was triable by a Court of Sessions, it was committed to the Court of Sessions and came to be registered as Sessions Case No.176 of 1991.

2.2 Charge came to be framed for the offences, to which the accused-appellant pleaded not guilty. The learned Additional Sessions Judge, after considering the evidence led by the prosecution, came to a conclusion that the charges levelled against the accused-appellant were proved and, therefore, recorded the conviction and sentence, as stated above.

2.3 On being aggrieved by the conviction and sentence, the appellant-accused has preferred this appeal.

3. Ms. Acharya, appearing for the appellant, has taken us through the record and proceedings. Learned Additional Public Prosecutor, Mr. Abichandani, has also taken us through the record and proceedings.

4. Learned advocate for the appellant submitted that the Trial Court has committed an error in not appreciating and in not accepting the defence version that the accused-appellant was suffering from schizophrenia and the incident occurred while he was under an attack of schizophrenia. Conviction could not have been recorded by the Trial Court in view of the fact that the accused, even after the arrest, had to take medical treatment for schizophrenia. She, therefore, urged that the evidence may be examined from this angle and the appeal may be accepted.

5. Learned Additional Public Prosecutor, on the other hand, while opposing the appeal, submitted that there is evidence that the appellant was suffering from schizophrenia few months after the incident, but there is no evidence to indicate that prior to the incident, the appellant did have attacks of schizophrenia, for which he was treated. He also submitted that there is absolutely no evidence to indicate that, at the time of the incident also, the appellant was suffering from schizophrenia. The appellant, therefore, cannot claim any benefit of unsoundness of mind at the time of the incident. He, therefore, urged that the appeal may be dismissed.

6. Having regard to the contentions raised before us and after screening the evidence on record, we are of the opinion that the conviction recorded by the Trial Court is justified and it is recorded after due, just and legal appreciation of evidence.

7. There is direct evidence of Sharifaben, at Ex.49, who, not only happens to be the wife of the appellant, but who is herself injured in the incident and before whose eyes, three minor daughters were done to death by the appellant. She has, in terms, implicated the appellant with the murder of three minor children and with an attempt on her life by the appellant. We have closely examined her evidence and finds no infirmity therein. Despite cross-examination, her deposition has remained unshaken.

8. There is no controversy about the injury having been caused by the appellant to his wife, the complainant. The injuries are of serious nature and that, but for timely treatment, she would have succumbed to them. There is also no controversy about the fact that three minor children ranging from 11 months to 4 years of age have been done to death by the appellant while they were fast asleep. There is no question of any provocation at the hands of these undefended victims.

9. It transpires from the evidence of Sharifaben that the suggestion put to her about the appellant having lost mental balance prior to the incident has been firmly denied by her.

9.1 The record reveals that an attempt was made to get examined certain witnesses as Court witnesses, the important one being one Dr. Chapariya. Consequent thereupon, after the prosecution evidence was over, an application was moved by the appellant-accused to summon certain witnesses, one of whom was Dr. Chapariya. The defence has, however, examined only two witnesses, Dr. G.D. Trivedi (Ex.72) and Dr. S.P. Desai (Ex.79). These two doctors do not depose anything about any mental illness of the appellant prior to the incident or at the time of the incident. The defence, after having applied for calling Dr. Chapariya as a defence witness, who according to the defence was the doctor who had treated the appellant during the first schizophrenia attack prior to the incident, dropped him as defence witness and the evidence was closed by passing a Purshis.

10. The necessary outcome is that the evidence led by the prosecution, particularly deposition of Sharifaben, has remained unshaken. It is true that Nooriben, who is claimed to have reached the place of incident after the incident has not supported the prosecution and, naturally so, because she happens to be the mother of the appellant-accused.

11. What comes on surface is, therefore, that there is no evidence to indicate that, on the day of the incident, the appellant-accused was suffering from any mental disorder. There is no evidence to indicate that prior to the incident the accused was suffering from any mental disorder. It is only after about three months of the arrest that symptoms of schizophrenia were noticed and the appellant was treated for the purpose around September 1991. On the contrary, it has come in evidence of defence witness No.2-Dr. S.P. Desai (Ex.79) that,

when the appellant was brought before him on 12.9.1991, i.e. three months after the incident, he was found to be restless and did not look into the eyes. This doctor states that these indications or symptoms could be result of repentance. The doctor has also stated that, they had no record to say that the appellant was suffering from schizophrenia either on 10th June, 1991 or prior thereto.

12. Having considered the evidence from all possible angles suggested by the learned Advocate for the appellant, we are unable to accept the contention that the incident occurred while the appellant was under the influence of schizophrenia or any other mental disorder, which would entitle him to the benefit of Section 84 of I.P.C.

13. There is unshaken and direct evidence of Sharifa, who is herself a victim and an eye-witness to the triple murder. No reasons are indicated for the incident except that there was some difference of opinion about staying in a separate house, which was resolved few days prior to the incident. In our view, therefore, the Trial Court has appreciated the evidence in its proper perspective and in light of the settled proposition of law as to interpretation and evaluation of evidence. In absence of any material to indicate that the appellant was suffering from schizophrenia at the time of the incident, we are unable to accept the contention. There is no material to indicate that even prior to the incident, the appellant was suffering leaving no scope for even inferring a possibility of the appellant being under influence of schizophrenia at the time of the incident.

13.1 The convict/appellant has not, excepting a suggestion during cross-examination of Sharifaben, taken the defence in his statement under Section 313 of the Code of Criminal Procedure about his insanity.

13.2 It is also worth a note that it has come on record that at the time of the trial, the appellant was not suffering from insanity and was fit to face the trial as per medical certificate.

13.3 So far as sentence part is concerned, in our opinion, no interference is called for when the Trial Court has inflicted the minimum punishment prescribed by law so far as offence of murder punishable under Section 302 is concerned, namely, imprisonment for life. The other sentence is to run concurrently and, therefore, we deem it unnecessary to interfere with that aspect of the judgment as well.

14. For the foregoing reasons, we do not see any merit in this appeal. The appeal, therefore, must fail and is dismissed. The judgment and order impugned herein is confirmed.

15. In view of the dismissal of the appeal, Criminal Misc. Application No.460 of 1996 does not survive and, accordingly, it is disposed of. Rule is discharged.

[J.N. BHATT, ACTG. C.J.]

[A. L. DAVE, J.]

gt